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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/553,300

10/14/2005

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09/12/2008

EXAMINER

NASH, BRIAN D

ART UNIT

PAPER NUMBER

3721

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DELIVERY MODE

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/553,300	<b>Applicant(s)</b> MEIXNER ET AL.	
	<b>Examiner</b> Brian Nash	<b>Art Unit</b> 3721	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 16 May 2008.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 9-17 and 19-25 is/are pending in the application.
- 4a) Of the above claim(s) 19-21 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 9-17 and 22-25 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 14 October 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Examiner's Comments***

1. This action is in response to applicant's amendment received 5/16/2008. The pending claims are now 9-17 and 19-25.

### ***Election/Restrictions***

2. Regarding amended claims 17 and 19-21, the Examiner maintains the position held in the previous office action, i.e. claim 17 will be examined; however claims 19-21 remain withdrawn from consideration for the reasons below. Newly submitted claims 17-21 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons:

3. claims 19-21 include subject matter that was not part of original claims 1-8 nor in amended claims 9-16 in the prosecution history and such subject matter requires a different scope of search in the prior art, i.e. the invention of claims 19-21 is distinct from the originally claimed invention. Since applicant has received an action on the merits for the originally presented invention, claims 19-21 are accordingly withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

### ***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 9-17 and 19-25 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 9, the terminology "and without any intermediate parts" is indefinite because it is not clear what applicant is claiming or what structural limitations are encompassed by the claim. Specifically, does the claim intend to limit the percussion mechanism of hammer tool such that no additional parts are involved or is the claim attempting to narrowly define parts located between the structure of a striker

Art Unit: 3721

element and a tool bit. Since no location in the tool of such parts has been given nor have any structural or operational boundaries been established in either claim 9 or the specification, claim 9 is indefinite. Since such a power tool cannot possibly operate without intermediate parts other than a striker and a tool bit, the Examiner has construed the claim in the absence of the newly amended text. Appropriate correction is required.

In claim 23, the phrase "capable of being set into a rearward motion to the direction of the tool bit" is indefinite because it is not clear what applicant is claiming or what structural limitations are encompassed by the claim. Specifically, does the "being set into" define "moving in a direction of"? Also what direction or frame of reference is defined by "direction of the tool bit"? Appropriate correction is required.

***Claim Rejections - 35 USC § 102***

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claim 9 is rejected under 35 U.S.C. 102(b) as being anticipated by GB 2285007A to Muetschele et al. Muetschele et al show the same percussion mechanism for a hammering tool:

With respect to claim 9, a striker (17) axially displaceable in a guide barrel (15), a percussion mechanism (16) that exerts pressure on the striker such that the striker moves forward in the direction of a tool bit (25), a blocking element (47,48 – see Figs. 2,5) capable of blocking the striker (17) in its forward motion and the striking frequency of the percussion mechanism is capable of being adjusted by controlling the time of which the blocking element prevents forward movement of the striker. The Examiner notes that the striker (17) imparts impacts directly to an end section of the tool bit (25) via intermediate punch (19) and that the tool would not function properly without such a direct imparting of

Art Unit: 3721

the impact force from the striker (17), i.e. an impacting hammer drill needs to have a direct imparting of the impacting forces whether intermediate anvils or punches are present.

8. Claims 9-12, 15 and 23-25 are rejected under 35 U.S.C. 102(b) as being anticipated by US 6,675,908 to Frauhammer et al. Frauhammer et al show the same percussion mechanism for a hammering tool:

With respect to claim 9, a percussion mechanism (12) that is axially displaceable in a guide barrel (13) includes a striker (17), a device (16) that exerts pressure on the striker, a tool bit (not shown) that is insertable into the hand tool (10) of the percussion mechanism, a blocking element (23,31) that is capable of blocking the striker in its forward motion and wherein the striking frequency of the striker is capable of being adjusted by changing the time of that the blocking element (13) prevents forward motion of the striker. The Examiner notes that the striker (17) imparts impacts directly to an end section of the tool bit (not shown) via intermediate punch (18) and that the tool would not function properly without such a direct imparting of the impact force from the striker (17), i.e. an impacting hammer drill needs to have a direct imparting of the impacting forces whether intermediate anvils or punches are present.

With respect to claim 10, a pressure reservoir (25) that is fillable with a gas and located on a side of the striker diametrically opposite the tool bit holder (20).

With respect to claims 11 and 15, air is delivered into and out of the pressure reservoir (25) via valve (26). The pressure reservoir is sealed via (15) covering (26) thereby increasing the pressure within the reservoir and gas pressure is also released when valve (26) is uncovered and the pressurized gas exits.

With respect to claim 12, the amount of gas delivered to the reservoir (25) through valve (26) is capable of being controlled.

With respect to claims 23-25, Frauhammer et al disclose a compression spring (27) acting in the device and located in the tool.

***Claim Rejections - 35 USC § 103***

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 13-14 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 6,675,908 to Frauhammer et al. Frauhammer et al show the invention substantially as claimed; however,

With respect to claims 13 and 14, Frauhammer et al do not explicitly show or mention a pump device for delivering gas to the pressure reservoir. However, it is well known and common in the art hand held power tools to operate either with an external air source or an internal pump located within the tool. It would have been obvious to one skilled in the art to configure/modify the tool of Frauhammer et al in order to include its own pump device for supplying gas to the pressure reservoir since such a modification is within the engineering purview of the skilled artisan concerned with providing a mobile and cordless power tool.

With respect to claim 16, insofar as the invention is understood, it is reasonable to conclude that blocking time of the blocking member controllable as a function of a user-selectable striking frequency. The user operates the hammer tool via a trigger mechanism which either directly controls the amount of gas pumped into the pressure reservoir or controls the operation of a motor that operates the piston (16) that pressurizes the gas in the pressure reservoir. The blocking element (23,31) operates in response to the frequency of the striker (17) thereby making the blocking time a function of the user selection.

***Allowable Subject Matter***

11. Claim 22 appears to be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

***Response to Arguments***

12. *In re* claim 9, applicant's arguments filed 5/16/2008 have been fully considered but they are not persuasive. Applicant contends, *inter alia*, that neither Muetschele nor Frauhammer perform the same function as the claimed invention. Examiner acknowledges applicant's position; however, a reference is deemed to properly anticipate a claim when all the recited structural limitations are disclosed therein. In this instance, both Muetschele and Frauhammer clearly show all the recited structural limitations including both a percussion mechanism that directly imparts impacts to a tool bit AND a blocking element capable of blocking the striker in its forward motion and controlling the striking frequency of the percussion mechanism via changing the time of which the blocking element prevents forward movement of the striker. While it is noted that the device of Muetschele or Frauhammer may not perform the same function or in the same manner as applicant's invention, it is deemed that the claims are not restrictive to such device. For the reasons above, the grounds for rejection are deemed proper.

***Conclusion***

13. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian Nash whose telephone number is 571-272-4465. The examiner can normally be reached on Monday – Thursday from 8 a.m. to 6 p.m.

15. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi I. Rada can be reached at 571-272-4467. The official fax number for this Group is: 571-273-8300

Art Unit: 3721

16. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Brian D. Nash/  
Primary Examiner, Art Unit 3721

9/9/2008